IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 385 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMAYAN ALIAS RAMDHAN ALIAS RAMANAND RAMKISHOR RAJPUT
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 385 of 2000
MR G RAMAKRISHNAN for Appellant No.
THROUGH JAIL for Appellant No.
MS HANSA PUNANI APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 08/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.P.DHOLAKIA)

The appellant - original accused against whom a complaint has been lodged by the victim before the Umargaon Police Station for the offences punishable under sections 376 of Indian Penal Code and Sec.3(1)(10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities), 1989 Atrocity Act, which has been registered vide Crime Register No.I-33 of 1999, wherein the appellant was arrested and sent in judicial custody and at the end of investigation chargesheet has been submitted and the case was committed to the Court of Sessions at Valsad and same was registered as Special (Atrocity) Case NO.27 of 1999 and at the end of trial, the learned Special Judge, Valsad at Navsari convicted the present appellant original accused for the offence punishable under sec.376 of Indian Penal code and he is ordered to suffer rigorous imprisonment for a period of 10 years and fine of Rs.5000/- and in default, one year simple imprisonment, vide judgement and order dtd.14/3/2000 and also directed to pay Rs.10,000/- to the victim towards compensation, failing which, liberty was granted to attach the immovable properties of the appellant.

2. Assailing the aforesaid conviction judgement and order, the appellant has preferred this appeal under sec.374(2) of the Code of Criminal Procedure, 1973.

3. Heard Mr.G.Ramakrishnan, learned counsel for the appellant and Ms.Hansa Punani, learned Additional Public Prosecutor for State at length.

4. It is the case of the prosecution that on the day of incident i.e. on 15/2/1999 at about 19.00 to 19.30 hrs. as the victim was having menstruation period, she was required to take bath in river as per their tradition and accordingly, she went to river Varli and when she was taking bath, the appellant accused rushed at the place, caught-hold the victim and dragged her to the place of incident. When she was being dragged by the appellant, she raised an alarm calling Mulji Sukha for her rescue, but she was prevented from doing so by shutting her mouth and put the victim prosecutrix in a helpless condition by the accused and the accused embraced her by his hands, put off Chhaniya, removed the under garments of the victim and also removed his garments and thereafter committed the offence. It is also the case of the prosecution that the victim further raised an alarm for her rescue to Mulji, when she was subjected to the sexual

assault at the hand of the appellant, Mulji responded the alarm raised by the victim and came at the place of incident and threw a light of torch which invited the anger of the appellant who excited and made an attempt to assault the Mulji Sukha. Mulji Sukha being afraid of the conduct of the appellant, ran away from the place of incident and thereafter, the victim was again subject to the sexual assault by the accused for the second time. It is further case of the prosecution that when the victim was subjected to sexual intercourse, meanwhile Mulji Sukha succeeded in calling upon the inhabitants of the locality, who rushed to the place of incident. The appellant looking at the inhabitants of the locality, escaped leaving the victim at the place of incident who narrated the entire incident to the persons who gathered there and thereafter, all the persons have gone to the temple, but did not find the accused and thereafter lodged the FIR on the next day at about 16.30 hours on 16/2/1999.

5. The present appellant was arrested and investigation was started and the victim was taken to the hospital for medical examination where she was examined by Dr.Jaswantbhai Mangaldas Patel in association with lady Gynecologist. In the same way, the appellant accused was also taken to the hospital for medical examination with Police Yadi and the police has also collected various evidence and also recorded statements of various witnesses and ultimately, at the end of investigation, chargesheet was filed into the court of Judicial Magistrate (FC), Umargaon under sec.173 of the Code of Criminal Procedure for the offence punishable under sections 376 of Indian Penal Code and under sec.3(1)(10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. As the offence is exclusively triable by the Court of Sessions, the learned Judicial Magistrate (FC), Umargaon committed the case to the Court of Sessions and it has been numbered as Special (Atrocity) Case No.27 of 1999. The appellant pleaded not guilty and claimed for trial and therefore, the prosecution is asked to produce and adduce the evidence the evidence relied upon by it in order to substantiate the charge against the accused. To prove the guilt against the appellant, the prosecution has examined the following witnesses;-

[1] PW No.1 Jaswantibhai Mangaldas Patel, Medical Officer (Exh.6).
[2] PW No.2 Kusumben Janibhai (Exh.11).
[3] PW No.3 Muljibhai Sukhabhai (Exh.13).
[4] PW No.4 Shantaram Mahadu (Exh.14).

[5] PW No.5 Shankarbhai Babarbhai Patel (Exh.21).

6. On submissions of the closing purshis by the prosecution, the learned Judge recorded further statement of the appellant accused under sec.313 of the Code of Criminal Procedure and after hearing learned counsel for the respective parties, the learned Sessions Judge convicted the appellant as stated hereinabove. Hence this appeal.

7. Learned counsel for the appellant has not denied the incident in question, but it has been specifically argued by him that it is a case of consent and the appellant accused and the victim both were major. In support of his submissions, he has taken us through the FIR Ex.12, oral evidence of the victim Ex.11, oral evidence of Mulji Sukha Ex.13, medical evidence with respect of the victim Ex.9, medical evidence with respect of the accused appellant Ex.8 and FSL Report Ex.20, and argued that as per the evidence on record the age of the victim was about 20 years and she was having sexual relation with the appellant and hence he surrendered herself to the accused. In that connection, he has taken us through the medical evidence of victim and argued that as per the medical evidence of the victim, no external mark of injury is found on the person of the victim prosecutrix and argued that it is clear cut case of consent and not the case of rape or subjected to sexual harassment. He has also argued that it is willful submissions on the part of the victim and she was consenting party to the entire episode and since she was major and was consenting party and when she has voluntarily cohabited with the appellant accused, no offence can be said to have been committed by the appellant accused. It has also been argued that as per the prosecution case on record, the victim was not willing to lodge the complaint but same has been lodged as PW 3 Muljibhai has persuaded to do so. It has also been argued that there is delay of 12 hours in filing the FIR and said delay has not been properly explained. He has also argued that the evidence of the prosecution is either lacking, contrary to each other, it loses all significance and ultimately he has argued that the appeal is required to be allowed and the appellant is required to be acquitted from the charged levelled against him. Lastly, he has also alternatively submited that looking to the age of the appellant, nature of the offence, consent of the victim, the punishment awarded by the court below is on higher side.

8. On the other hand, Ms.Hansa Punani, learned APP

has mainly argued that the impugned judgement is well reasoned judgement which has been delivered by the trial court on the basis of cogent evidence on record and the prosecution has succeeded in proving the offence against the appellant beyond reasonable doubt by leading trustworthy and reliable evidence. In support of her arguments, she has taken us through the oral evidence of the victim PW No.2, Ex.11 Medical Evidence of the victim PW No.2, evidence of PW No.3 Ex.13. She has further argued that the oral evidence of the prosecutrix victim does not require any corroboration, however, the prosecution gets corroboration from the evidence of PW No.3 Muljibhai Sukhabhai Ex.13, medical evidences as well as from the FSL Report. She has also argued that the prosecution has proved the case against the appellant beyond reasonable doubt. Consequently, she has prayed to dismiss the appeal as the impugned judgement of conviction does not require any interference.

9. To prove the case, the prosecution has mainly relied on the evidence of victim prosecutrix PW No.2. She has deposed before the court and she has been thoroughly cross-examined by the other side and nothing has been come out which destroy the case of the prosecution. The evidence of the prosecutrix is trustworthy and which involves the appellant into the crime in question. It is established from the record that the prosecutrix and the accused were known to each other as the accused was Sadhu in the temple situated very near to the vicinity of the residence of the victim, and the victim was going for labour work for some times in the temple itself and therefore, there is no question of misidentification and name of the accused. The act of the accused has been stated in detail by the victim in the complaint at the earliest and same has been supported by the victim in her oral evidence. The prosecution gets supports from the evidence of PW No.3 Muljibhai Sukhabhai, who has witnessed the incident and as per the evidence on record, he cannot be said to be a chance witness, as he is residing very near to the place of incident along with his family. It is true that at the time of incident, the victim was aged about 20 years and there is no marks of external injury on the body of the victim. However, in view of the evidence on record, it cannot be said that it is a case of consent and it cannot be said that the PW No.3 Muljibhai Sukhabhai came to the place of incident to save the victim, but at that time the appellant became furious and hence the PW No.3 had to left the place. Hence, merely because there is no marks of external injury on the body of the victim, it cannot be said that it is a case of consent. The said aspect

has been discussed by the trial court in para 17 onwards of the impugned judgement and hence, we are not inclined to repeat the same. Once the appellant has not denied the incident, the burden upon the prosecution is limited to the extent that whether it is a case of consent or not. As discussed earlier, the evidence on record clearly shows that it is not a case of consent. So far as the contention raised by the learned counsel for the appellant regarding delay of 12 hours in filing the FIR is concerned, from the evidence it is clear that the incident in question has taken place between 7.00 and 7.30 p.m.; and thereafter, all the persons gathered there, were gone to the temple, but they did not find the accused there; they were gone to the the house of the victim; and after due discussion, they have decided to file the FIR and hence they went to the Police Station which is admittedly far away from the village. In such circumstances, as the offence has taken place at evening hours and in between there was night and in the morning the FIR has been filed and therefore, the delay of 12 hours has been occurred. So far as the submissions made by the learned counsel for the appellant regarding higher punishment, we are of the opinion that considering the material on record, seriousness of the offence and the fact that the appellant was Sadhu, who was staying in the temple in the same village, were are of the opinion that no leniency is required to be shown. In view of the above discussion, we are of the opinion that no interference by this Court is required.

10. In view of the above, the appeal is dismissed.

(R.P.DHOLAKIA,J.)

(SHARAD D.DAVE,J.)

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